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Supreme Court of the United States

OCTOBER TERM, 1954

No. 526

CHARLES SIMON,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Supreme Court of the United States

OCTOBER TERM, 1954

No.

CHARLES SIMON,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the United States District Court for the Southern District of California, Central Division, convicting the petitioner of a violation of the Universal Military Training and Service Act and sentencing him to the custody of the Attorney General.

OPINION BELOW

The opinion of the Court of Appeals is not yet reported. It is printed as Appendix A to this petition (page 15).

JURISDICTION

The judgment of the Court of Appeals was entered on December 17, 1954. (See Appendix B to this petition, page 21). The time for filing this petition for writ of certiorari expires January 16, 1954. This petition for writ of certiorari is filed within the time. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1). (See also Rules 37(b) (2) and 45(a), Federal Rules of Criminal Procedure.) The district court had jurisdiction under 18 U. S. C. § 3231.

QUESTIONS PRESENTED

I.

Whether the denial of the claim for classification as a conscientious objector was without basis in fact and whether the recommendation of the hearing officer, adopted by the Department of Justice, and the classification given to appellant by the appeal board were arbitrary, capricious, illegal and without basis in fact.

II.

Whether Simon was denied the right to a full and fair hearing upon personal appearance and not permitted to exercise the rights of discussion and argument guaranteed to him by Section 1624.2(b) of the Selective Service Regulations.

III.

Whether petitioner was denied a full and fair hearing upon the hearing before the hearing officer by not being given a full and adequate summary of the FBI report.

IV.

Whether petitioner was denied his right to have the use of the FBI report upon the trial to test and determine whether the hearing officer should have given him a fair and adequate summary, which he had a right to have, and which right is guaranteed by the due-process clause of the Fifth Amendment, the act and the regulations.

STATUTES AND REGULATIONS INVOLVED

Section 1(c) of the Universal Military Training and Service Act (50 U. S. C. App. § 451(c)) is involved. Also, Section 6(j) of the act must be considered (50 U. S. C. App. § 456(j), 65 Stat. 75, 83, 86). See also Section 12(a) of the act (50 U. S. C. App. § 462(a)).

Section 1622.1(d), 1622.14, 1624.2(b), 1626.25 and 1626.26 of the regulations (32 C. F. R. §§ 1622.1(d), 1622.14, 1624.2 (b), 1626.25 and 1626.26 are involved. These are extensive provisions. They are printed as Appendix C, below, pages 21-28.

STATEMENT OF THE CASE

The Facts

Charles Simon was born on August 16, 1931. (1)[1] He registered with his local board on August 18, 1949. (2) The board mailed a classification questionnaire to him. (3) The questionnaire was properly filled out by Simon and filed with the local board. (4) He showed his name and address. (5) In answer to one of the questions appearing in Series VI he said that he did not regularly serve as a minister. (6) He stated that he was a minister of Jehovah's Witnesses and of the Watchtower Bible and Tract Society. He

[1] Numbers appearing herein within parentheses refer to pages of the draft board file that are written in longhand at the bottom of each page and circled.

said that he had been such since June 13, 1939. He said that he was ordained on August 20, 1940, at Elkhart, Indiana. (6)

Simon also stated that he was a full-time college student. He showed that he was going to the Compton Junior College. (7, 9) He said that he was majoring in printing and art. (9) He said that he expected to get a diploma and degree in February, 1953. (9)

Petitioner signed Series XIV. In this section of the questionnaire he asked the local board to send him the special form for conscientious objector because he was conscientiously opposed to participation to war in any form. (10) At the conclusion of the questionnaire he claimed classification in Class IV-E. (10)

In the questionnaire he also referred to attached statements supporting his position as a conscientious objector. He signed the questionnaire in the manner required by law. (10)

In the letter referred to in the questionnaire he stated he was asking for the conscientious objector classification of Class IV-E. (12-13) He said that he had been seriously studying the Bible at an early age and that he had been reared in the faith by his parents. He said that he relied completely upon the Bible. He then explained extensively that God proposed to vindicate His name and prove the Devil to be a liar before all mankind. He said that because the life was in the blood he could not take blood. He emphasized that he relied on the Ten Commandments. (12)

He said that he was opposed to both combatant and noncombatant military service and that he had pledged his life to Jehovah God. He showed that his weapons of warfare were not carnal. He concluded with the statement that he was not making the claim in order to dodge the draft but because he placed God above man. (12)

On October 10, 1950, the local board mailed to Simon a special form for conscientious objector. (11) He properly filled out the conscientious objector form and returned it to

the local board. It was filed on October 8, 1950. (17) He signed Series I (B). (18)

He answered that he believed in the Supreme Being. He then described the nature of his beliefs, showing that his beliefs were deep-seated and that they involved duties to God that were higher than those that he owed to the state. He showed that this belief had come about through serious study of the Bible. He referred to a separate paper. In this paper he quoted the Scriptures extensively. (20) He said that he was seeking God's kingdom first and that he was not seeking any kingdom of this world as a means of salvation.

He said that he was conscientiously opposed to participation in war in any form. He said that if he did participate he would be a friend of the world. He then added that to be a friend of the world was to be an enemy of God. (20-21) He then showed that he could not serve two masters. (21)

He was asked how it was that he came to get the opinions that he had as a conscientious objector. He said that he had had these opinions that obligated him to serve God since the age of nine. He added that he believed in the Supreme Being and that such Being was Jehovah God. He said that he had learned this through the study of the Holy Bible together with Watchtower publications that aided him in Bible study. (19)

In answer to the question as to whom he relied upon he said that he relied upon the Bible and the Watchtower for guidance. (19)

He answered that he did not believe in force or the use of force except under circumstances where Jehovah God permitted it. (19) He then stated that his service as a witness of Jehovah explaining God's kingdom to others conspicuously demonstrated the consistency and depth of his conviction as a conscientious objector. (19)

Simon then listed the schools that he had attended. He did not list any employers. He merely added that he had

been a part-time clerk. (19) He gave the list of the addresses where he had lived. (23) He named his parents. He then added that each was a Jehovah's Witness. (23) He said that he had never been a member of a military organization. (23)

He said that he was a member of a religious organization. He pointed out that the Watchtower Bible and Tract Society was the legal governing body of Jehovah's Witnesses, the group to which he belonged. (23) He said that he became a member of that organization in 1939 by and through home Bible study. (23) He listed the church located at Compton, California, that he had attended. He showed that Mr. Lyon was the presiding minister of the church. (23)

Simon then referred to a clipping from the *Watchtower* magazine for a description of the nature of the beliefs of the organization on opposition to war. (23) He then referred to the attached *Watchtower*. (22) In this he had underscored the following: "For this neutral position toward the deadly conflicts of this old world and for their Christian devotion and allegiance to God's New World government by his Son Jehovah's Witnesses are hated by all nations and suffer persecution at the hands of the religious friends of the old world." (22)

Simon listed a number of persons as references. He then signed the conscientious objector form. (24) He attached a certificate by Glenn Mounce, showing that he attended regularly the meetings of Jehovah's Witnesses and engaged in the house-to-house preaching work of Jehovah's Witnesses. (25) Robert Merriott, Sam Cook, H. B. Robbins, and E. R. Vanice also signed certificates that were attached to the special form for conscientious objector. (26-30)

On October 26, 1950, the local board classified Simon in Class I-A. He was notified of this classification. (11) He wrote a letter to the board reminding it of his claim for classification as a conscientious objector. In this he requested a personal appearance. (11) This was filed with the local board. (11)

Simon then filed with the local board a letter from the dean showing that he was a full-time student at the Compton Junior College. (11)

On December 8, 1950, he was notified to appear on December 13, 1950. (11, 35) On that date he appeared. A memorandum was made. (11, 36)

Simon testified about his personal appearance. [R. 13-26] He said that he went to the board for the purpose of discussing his classification. He wanted to show to the board the meaning to him and the importance of the obligation that was imposed upon him by certain scriptures that he had cited in his papers. He wanted to discuss this. (13-14) He tried to discuss this material but was not permitted to do so. (14) He told the board at the hearing that the basis of his conscientious objection was home training. He opened his Bible and tried to give evidence as to why he could not participate in war. The board said that it was unnecessary for him to do this. They said that they "were not interested in what I believed." [R. 21]

The local board informed him that that would be all and that he would receive notice of their decision after the hearing. [R. 22]

He testified that he attempted to read but was denied the opportunity to read aloud to the board. [R. 24] He said that he was prepared to give them information to "impress on their minds the importance of these scriptures" that he had already put in his file and also that he was prepared to explain what "they may have overlooked." He wanted to show the importance and explain things if they had "misunderstood what my feelings were." [R. 25] He said when he attempted to do this he was cut short and denied the right to explain or discuss these things with the board. [R. 26]

The memorandum of the local board merely showed that Simon said "it is against his belief" to go into the armed services. The memorandum then stated that it was the unanimous opinion of the board that he be "continued in Class I-A." (36)

Simon filed a letter with the local board upon the personal appearance. It was in writing. He showed in this that his undivided allegiance belonged to Jehovah God. (37) He said that if the law of man conflicted with the law of God God's law was to him supreme. (37) He showed that all nations of the world were defiled but that God's nation or kingdom was clean. (37) He indicated that he believed the law of God forbade him to shed blood and that if he were to kill he would be killed by God. (37) He said that he would not conform to the world. He showed that he would have to devote his life to God until death, because his life belonged to God and he had to be pleasing to God. (38)

On December 19, 1950, petitioner wrote a letter to the local board appealing his classification. (40) This was filed with the board. He was then ordered to take a preinduction physical examination and he was found acceptable for military service. (11, 43) His file was forwarded to the board of appeal. (11, 44) The appeal board made a preliminary determination that he was not entitled to the conscientious objector classification. (11) This entry in the minutes caused the file to be forwarded to the Department of Justice. (49) The Department of Justice received the file on November 5, 1951.

After the file was received by the Department of Justice there was an investigation conducted by the FBI on the sincerity of Simon's conscientious objections. The Department of Justice made a report following the completion of the investigation. This report was sent to the district attorney. The district attorney then forwarded it to the hearing officer of the Department of Justice. The hearing officer used the report of the Department of Justice when Simon appeared before him at the hearing. [R. 31-32]

Simon wrote a letter to the hearing officer when he received notice from the hearing officer that he was entitled to unfavorable evidence. [R. 26] The hearing officer wrote Simon a letter and told him that the unfavorable evidence would be made available to him at the hearing. [R. 26-27]

Simon went to the hearing and all the time was expecting to have the adverse evidence called to his attention as the hearing officer had told him. The hearing officer, however, did not inform him of any of the unfavorable evidence in the secret investigative report of the FBI. [R. 37] Simon said that the hearing officer had written him that he would make it available to him, and Simon said, "I expected that he would, but the information was not presented to me." [R. 26-27]

Simon said that at the hearing he did not ask for the adverse evidence orally, because he had previously done this by letter and that the hearing officer had answered by letter that it would be given at the hearing. [R. 30]

On March 11, 1952, the hearing officer made his report to the Department of Justice. It was very brief. He found that Simon had attended Compton Junior College one year. He said that Simon worked on Sunday when it was necessary. Simon believed that he had a right to protect his mother and brother by force, if necessary, and that if he did he would be forgiven by God. The hearing officer found Simon believed in God's law's being superior to man's law. He then recommended that Simon should be "placed in noncombatant service to wit, classed as I-A-O." (54)

The report of the hearing officer was sent to Washington. The Special Assistant to the Attorney General wrote a letter to the appeal board adopting the report and recommendation of the hearing officer. He found that Simon should be placed in Class I-A-O and made liable for noncombatant military service in the armed forces. (50) The appeal board classified Simon in Class I-A-O and notified him of it. (11) He was ordered to report for induction on July 31, 1952. (11, 58) Simon reported at the induction station and refused to be inducted. (62)

FORM AND HISTORY OF ACTION

SHOWING JURISDICTION IN DISTRICT COURT

The indictment charged petitioner with a violation of the Universal Military Training and Service Act. It was alleged that after petitioner registered and was classified he was ordered to report for induction. It was then alleged that on or about July 31, 1952, petitioner "knowingly failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do." [R. 4]

Petitioner pleaded not guilty and waived the right of trial by jury. Findings of fact and conclusions of law were also waived. [R. 8-9]

At the close of the evidence the motion for judgment of acquittal was made. [R. 10-12, 39-40] The motion for judgment of acquittal was denied. [R. 41-42] Petitioner was found guilty. [R. 41-42] He was sentenced to serve a period of four years in the custody of the Attorney General. [R. 4-6] Notice of appeal was timely filed. [R. 6-7] The transcript of the record (including statement of points relied upon) has been timely filed in this Court.

REASONS FOR GRANTING THE WRIT

I.

The decision of the court below is in direct conflict with the holdings in other cases decided by other courts of appeals.—See *Williams* v. *United States*, 5th Cir., 1954, 216 F. 2d 350, 351-352; *Annett* v. *United States*, 10th Cir., 1953, 205 F. 2d 689; *United States* v. *Pekarski*, 2d Cir., 1953, 207 F. 2d 930; *Taffs* v. *United States*, 8th Cir., 1953, 208 F. 2d 329; *Jewell* v. *United States*, 6th Cir., 1953, 208 F. 2d 770; *United States* v. *Hartman*, 2d Cir., 1954, 209 F. 2d 366; *Pine* v. *United States*, 4th Cir., 1954, 212 F. 2d 93; *Weaver*

v. *United States*, 8th Cir., 1954, 210 F. 2d 815; *Jessen* v. *United States*, 10th Cir., 1954, 212 F. 2d 897; *United States* v. *Close*, 7th Cir., 1954, 215 F. 2d 339; *United States* v. *Wilson*, 7th Cir., 1954, 215 F. 2d 443. Compare *Clark* v. *United States*, 9th Cir., December 3, 1954, — F. 2d — ; *Pitts* v. *United States*, 9th Cir., December 7, 1954, — F. 2d —; *Affeldt* v. *United States*, 9th Cir., December 14, 1954, — F. 2d — ;*Ashauer* v. *United States*, 9th Cir., December 21, 1954, — F. 2d —.

It is submitted, therefore, that there is a direct conflict between the holding of the court below and the holding of other courts of appeals on this question. This gives a basis for granting the writ of certiorari.

II.

There is involved another important and substantial question of law that has not been determined but that ought to be decided by this Court. It is whether arbitrarily granting only a portion of the conscientious objector claim is illegal. The proof showed and the claim for classification was for the full conscientious objector status. This was the I-O classification. The appeal board found petitioner to be a sincere conscientious objector but it ordered him to do noncombatant military service, to which he objected. —Note the opinion by the Court of Appeals (page 16, paragraph 1), where reference is made to the *Tomlinson* opinion. See the last two sentences of footnote 4 of the opinion at page 31 of the petition for writ of certiorari filed in this Court in the *Tomlinson* case.

This type of draft board classification has been held by two federal district courts to be arbitrary and capricious, so as to require an acquittal.—See *United States* v. *Relyea*, No. 20543, United States District Court for the Northern District of Ohio, Eastern Division, decided May 18, 1952, and *United States* v. *Goddard*, No. 3616, District of Montana, Butte Division, June 26, 1952. Copies of these opinions appear be[illegible]v, Appendix D, pages 29-32.

III.

There is another conflict between the holdings of the court below and those of another court of appeals. It held that the refusal to permit the registrant to discuss his classification as guaranteed by Section 1624.2(b) was not a violation of procedural due process of law because he was not prepared to give oral new and additional evidence at his personal appearance. It is not required that the registrant be prepared to give new and additional evidence. The regulations guaranteed him the right to argue and discuss his case. This right is not hinged on new and additional evidence. (See *United States* v. *Stiles*, 3rd Cir., 1948, 169 F. 2d 455, 457.) The holding of the court below is in conflict with this holding. It also directly conflicts with *Davis* v. *United States*, 6th Cir., 1952, 199 F. 2d 689, and *Bejelis* v. *United States*, 6th Cir., 1953, 206 F. 2d 354.

IV.

There is presented another question of federal criminal law that is of great public importance and that ought to be decided by this Court. It is whether the hearing officer was required by law to give a summary of the adverse evidence to petitioner. This is a question that will be determined by this Court in *Simmons* v. *United States*, No. 251, October Term, 1954.—See pages 40-53 of the brief for petitioner in the *Simmons* case.

The court below attempts erroneously to evade the question by saying that Simon did not ask for any such statement and that he did not make such request in his prior letter to the hearing officer before the hearing. The findings of the trial court contradict the statement of the court of appeals in footnote 1. It was stipulated by the parties and approved by the trial court that Simon "sent a request for such information to the hearing officer in a letter dated February 15, 1952." [R. 34] There was absolutely no question of credibility about Simon's testimony as a

result of this stipulation. The Court below committed error when it concluded as it did in footnote 1 in the opinion in this case. (See page 19 below.) For a further discussion of the importance of the question presented see pages 20-21 of the petition for writ of certiorari in *Simmons* v. *United States*, No. 251, October Term, 1954.

V.

Another substantial and important question of federal criminal procedure that ought to be determined by this Court is involved here. It is that the exclusion from evidence of the secret FBI investigative report was reversible error. The FBI report was sought at the trial for the purpose of determining whether the hearing officer had given to the petitioner a full and fair summary of the adverse evidence from unknown informers. The petition for writ of certiorari should be granted because the decision below is in conflict with an earlier holding by the court below in *United States* v. *Gray,* 9th Cir., 1953, 207 F. 2d 237, 241-242. This same question is presented to this Court in *Simmons* v. *United States,* No. 251, October Term, 1954, pages 53 to 72 of brief for petitioner.

The court below says that there was no reference whatever by the hearing officer or by the Department of Justice to information contained in the FBI report. This argument overlooks the fact that the hearing officer and the Department of Justice had the FBI report before them and the report may well have contained an adverse recommendation. The recommendation of the Department of Justice was based on the entire record, which included the FBI report. Since the Department of Justice did not specifically state that there was no unfavorable evidence, it required speculation to assume that there was no unfavorable evidence in the FBI report relied upon by the Department of Justice.

VI.

This case is similar to the case of *Tomlinson* v. *United States*, No. 39, October Term, 1954, now pending undetermined before this Court on a petition for writ of certiorari. The petitioner here adopts all the reasons stated at pages 14-21 of that petition and makes them a part of this petition for additional reason for granting the writ here.

CONCLUSION

For the reasons above stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

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Counsel for Petitioner

January, 1955.

APPENDIX A

OPINION OF COURT BELOW

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CHARLES SIMON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 13,942
Dec. 17, 1954

Appeal from the United States District Court for the Southern District of California, Central Division.

Before STEPHENS, BONE and POPE, Circuit Judges.

POPE, Circuit Judge.

The appellant was convicted of refusing to submit to induction into the armed forces of the United States in violation of the Universal Military Training and Service Act. Before the Selective Service boards he had claimed exemption as a conscientious objector. The appeal board finally placed him in Class I-A-O, that is to say, he was listed as a person conscientiously opposed to participation in war but subject to noncombatant service as defined in the Act. Upon the trial below he asserted that his order to report for induction was invalid for the reason that his classification was without basis in fact and because he was

denied a fair hearing both at the time of his personal appearance before the local board and at the time of his hearing before a hearing officer designated by the Department of Justice.

This case bears a striking resemblance to the case of Tomlinson v. United States, 9 cir., 216 F. 2d 12. While there is no claim here, as there was by Tomlinson, that the appellant was denied any rights in respect to his presentation of a claim that he should have been classified as a minister, yet the facts outlined in the Tomlinson case with respect to his claim that he should have been classified as a conscientious objector, exempt not only from combatant service but from noncombatant service and training as well, are in every substantial particular the same as those presented by this appellant.

When Simon first filed his questionnaire with the local board he claimed that he should have been classified IV-E, (this was subsequently called Class I-O). He attached to the questionnaire a lengthy typewritten statement explanatory of this claim. (In substance the views there expressed were the same as those in the letter of Tomlinson summarized in footnote 4 in that case.) Although it expounded at great length Simon's theological views and contained his account of the contest between God on the one hand and Satan on the other to procure the loyalty of man, it was singularly unenlightening to any person desirous of discovering whether the religious training and belief of this registrant were such as to make him a person conscientiously opposed to participation in war in any form within the meaning of §6(j) of the Act, (Title 50 App. 456j). He said: "Please note, I am conscientiously opposed to the factors of this world which are not in harmony with God." He quoted the text from the Sermon on the Mount beginning "No man can serve two masters." He said: "Knowing the two sides of the issue (as to who is supreme, Jehovah God or Satan, the God of this world) and knowing the consequence for disobedience to the Almighty God, I take my stand to serve

God with unswerving obedience to Him only. I must and will do everything in my power to hold a strict neutrality to the controversial war of today." Shortly thereafter Simon filed his Form 150, the special form for conscientious objectors, and attached a further lengthy typewritten statement explanatory of his religious views and supported by numerous quotations from the Bible. This contained protestations that the registrant was consecrated to do God's will, and concluded with a statement: "That participating in any of the armed forces activities makes me a friend of this world, and not a friend of God. Therefore I choose to be a friend of God rather than a friend of this world."

After the local board had classified Simon as 1-A, (available for unlimited military service), he appealed to the appeal board which referred his file to the Department of Justice. He was given a hearing before a hearing officer whose report was forwarded by the Department to the appeal board. That report discloses the registrant's age, his employment and education, his residence and his claim for exemption. It recited that Simon had brought a witness with him who was a minister of Jehovah's Witnesses and who testified to registrant's good character and his activity in attending the meetings of that sect. Speaking of the testimony of this witness, the hearing officer stated: "He knows that registrant believes in God's law as being superior to man's law."

We note that the statement just quoted is a very accurate summary of the position which Simon took in the various communications made by him to the local board to which reference has been made. The hearing officer recommended that Simon be placed in noncombatant service and classified as I-A-O. Such was the recommendation of the Department and the appeal board followed it.

For the same reasons which we outlined more fully in the Tomlinson case we think that it cannot be contended that there was no basis in fact for the classification which this appellant received. The hearing officer and the appeal

board recognized that the appellant was to some extent a conscientious objector; we think, however, that neither the trial court nor this court is in a position to say that when the board asked and answered the question: conscientious objector to what? it acted without basis in fact. The hearing officer had the opportunity to observe and question the registrant face to face. Even if the trial judge would have reached a different result from the evidence with which the Selective Service boards had to deal, that would have been no ground for setting aside the administrative determination. Cox v. United States, 332 U. S. 442, 453; Eagles v. Samuels, 329 U. S. 304, 316; Estep v. United States, 327 U. S. 114, 122. The hearing officer and the board can well infer from the registrant's written statements that his religious beliefs are that he should have no part or participation in the work of any secular government for such would be a service to Satan and not to God. As we stated in the Tomlinson case, "The board could well understand from appellant's representations that his objections would include such tasks for a government of 'this world' as fighting forest fires or building roads. An objection, on religious grounds, to any assignment which would take the registrant away from his missionary activities, is not an objection which the Act recognizes." (p. 18) It cannot be said that Simon's classification was without basis in fact.

Registrant makes a further contention that he was denied the right to discuss his classification and to offer new and additional evidence at the time he had his personal appearance before the local board. At the trial below the appellant took the stand and testified that when he was before the local board: "I proceeded to open the Bible and give them evidence as to why I could not participate in war and when one of the members saw me opening the Bible he stated it was not necessary for me to use the Bible because they were not interested in what I believed, but how sincere I was in what I believed." The witness also testified

that at that time he handed the local board a two page typewritten letter dated December 13, 1950. This letter appears in the Selective Service files. In general it is a further lengthy statement of the registrant's theological views along the lines stated in the documents previously referred to. It concludes with the statement: "I have been engaged in fighting against spiritual weakness for ten years now and my allegiance is under God and His Kingdom by Christ Jesus for only by such determination can I be found to be pleasing in the eyes of Jesus my God." It gave numerous scriptural citations. The court then inquired of the witness: "I say, did you have in mind to offer any additional Scriptural references and other information not then included in your file or in the letter which you then presented to them," to which the witness replied: "No, I don't believe so." Simon also testified on cross examination that at that hearing the board inquired if he sought to present any other new information aside from this letter and he replied in the negative.

We find no basis in the record for the contention that the registrant was denied an opportunity for a hearing before the local board.

Finally it is contended that at his hearing before the hearing officer the registrant was denied his right to have a summary of any unfavorable evidence in the possession of the hearing officer. The notice of the hearing had advised him that such would be given to him. At the trial appellant testified that when he appeared before the hearing officer the latter gave him no statement of any adverse matter in the FBI file, but he said he did not ask for any such statement then;[1] he also demanded an inspection of

[1] At the trial Simon testified that he wrote the hearing officer asking for such adverse information. He had no copy of his letter but in an effort to prove it, he introduced a letter from the hearing officer. The text of that letter indicated no such request. The trial judge was not required to believe Simon's testimony. National Labor Relations Bd. v. Howell Chevrolet Co., 9 cir., 204 F. 2d 79; Yutterman v. Sternberg, 8 cir., 86 F. 2d 321, 324.

the FBI report and offered it in evidence for the purpose of disclosing whether any adverse information was contained therein. It was rejected.

It is apparent from the hearing officer's report that the facts therein stated are those which he obtained from the appellant himself at the time of the hearing. No reference whatever is made to any information contained in any FBI report or from any other source. As in the Tomlinson case, there is nothing to show that the hearing officer drew any conclusions from an FBI report. We find no reason for an attack upon the validity of the classification in anything which transpired before the hearing officer. Tomlinson v. United States, supra, or in the refusal to receive the FBI report in evidence, White v. United States, 9 cir., 215 F. 2d 782.

The judgment is affirmed.

APPENDIX B

JUDGMENT

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CHARLES SIMON,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

No. 13,942

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

APPENDIX C

STATUTES AND REGULATIONS INVOLVED

Section 1(c) of the Act

Section 1(c) of the Universal Military Training and Service Act (50 U. S. C. App. § 451(c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625,

title I, § 1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, § 1(a) 65 Stat. 75.

Section 6(j) of the Act

Section 6(j) of the act (50 U. S. C. App. § 456(j), 65 Stat. 75, 83, 86) provides:

"Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such

claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."—50 U. S. C. App. § 456(j), 65 Stat. 75, 83, 86.

Section 12(a) of the Act

Section 12(a) of the act (50 U. S. C. App. § 462(a), 62 Stat. 622) provides:

". . . Any . . . person . . . who . . . refuses . . . service in the armed forces . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . ."

Section 1622.1(d) of the Regulations

Section 1622.1(d) of the Selective Service Regulations (32 C. F. R. § 1622.1(d) (E. O. 9988, 13 F. R. 4853; E. O. 10292, 16 F. R. 9862, Sept. 28, 1951)) provides:

"(d) In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each such registrant shall receive equal justice."

Section 1622.14(a) of the Regulations

Section 1622.14(a) of the Selective Service Regulations (32 C. F. R. § 1622.14(a) (E. O. 10292, 16 F. R. 9862, Sept. 28, 1951)) provides:

"*Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.*—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to both combatant and noncombatant training and service in the armed forces."

Section 1624.2(b) of the Regulations

Section 1624.2(b) of the Selective Service Regulations (32 C. F. R. § 1624.2(b) E. O. 9988, 13 F. R. 4874, Aug. 21,

1948, redesignated at 14 F. R. 5021, Aug. 13, 1949) provides:

"(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary."

Section 1626.25 of the Regulations

Section 1626.25 of the Selective Service Regulations (32 C. F. R. § 1626.25 (E. O. 9988, 13 F. R. 4874, Aug. 21, 1948, as amended by E. O. 10292, 16 F. R. 9862, Sept. 28, 1951)) provides:

"*Special provisions when appeal involves claim that registrant is a conscientious objector.*—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to noncombatant training and service in the armed forces, the appeal board shall first determine whether or not such registrant is eligible for classification in a class lower than Class I-A-O. If the appeal board determines that such registrant

is eligible for classification in a class lower than I-A-O, it shall classify the registrant in that class. If the appeal board determines that such registrant is not eligible for classification in a class lower than Class I-A-O, but is eligible for classification in Class I-A-O, it shall classify the registrant in that class.

"(2) If the appeal board determines that such registrant is not eligible for classification in either a class lower than Class I-A-O or in Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(3) If the registrant claims that he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, the appeal board shall first determine whether or not the registrant is eligible for classification in a class lower than Class I-O. If the appeal board finds that the registrant is not eligible for classification in a class lower than Class I-O, but does find that the registrant is eligible for classification in Class I-O, it shall place him in that class.

"(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and any file so forwarded shall be returned, unless in the 'Minutes of Action by Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board

reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in paragraph (a) (2) or (4) of this section.

"(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrants. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant both the letter containing the recommendation of the Department of Justice and the report of the Hearing Officer of the Department of Justice."

Section 1626.26 of the Regulations

Section 1626.26 of the Selective Service Regulations (32 C. F. R. § 1626.26 (E. O. 9988, 13 F. R. 4874, redesignated at 14 F. R. 5021, Aug. 13, 1949)) provides:

"*Decision of appeal board.*—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

"(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; *provided*, that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter."

APPENDIX D

DISTRICT COURT OF THE UNITED STATES

NORTHERN DISTRICT OF OHIO

Eastern Division

20,543

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES J. RELYEA,

Defendant.

ORAL OPINION OF THE COURT

March 18, 1952

McNAMEE, J.

For the United States, ROBERT G. CRISANTI, Ass't U. S. Attorney

For the Defendant, RALPH RUDD, ESQ.

THE COURT: At the time this case was presented to the court, at the conculsion of the evidence, I then formed a tentative but unexpressed judgment that the board acted without any rational basis for the classification made. However, as I probably indicated at the time, I desired to ex-

amine the record to ascertain whether the tentative judgment which I had formed, but not stated, was supported by the evidence in the case. Mr. Rudd has asked leave to file brief, and did so. Mr. Crisanti filed an opposing brief. Other briefs followed. Incidentally, they were all excellent briefs on both sides, very good briefs.

So I have examined the briefs and I have re-examined the record in the case, and after such examination and re-examination I find that the judgment I entertained at the conclusion of the evidence has been fully confirmed.

I think it would have been more difficult for the court to find the act of the Board was without any basis in fact if the Board had classified this man as I-A rather than I-A-O. They accepted the defendant's profession of sincere and conscientious objections on the religious grounds as being truthful, but they attempted, and in my opinion without any basis in fact, to assert that while he was sincere and conscientious, that sincerity and conscientiousness extended only to his active aggressive participation in military service and that he was not sincere in his statements that he was opposed to war and participation in war in all its forms.

I think it is unnecessary to review the evidence. The case has been so thoroughly and completely briefed that counsel on both sides are familiar with the facts and the law applicable thereto.

It is the opinion of this court that the classification of this defendant as I-A-O is without any rational basis, and the defendant is therefore found not guilty and discharged.

UNITED STATES DISTRICT COURT

DISTRICT OF MONTANA

Butte Division

No. 3616

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD LEE GODDARD,

Defendant.

JUDGMENT OF ACQUITTAL

Filed and entered June 26, 1952.

This case having come on for trial on the 2nd day of June, 1952, and the plaintiff being represented by Dalton Pierson, Esq., United States Attorney for the District of Montana, and R. Lewis Brown, Jr., Esq., Assitant United States Attorney for the District of Montana, and the defendant being present in person and represented by his counsel E. Gardner Brownlee, Esq., and Thomas P. Koch,

Thereupon the defendant, with the approval of the Court and consent of the government, orally in open court and in writing filed herein, waived trial by jury and consented to trial by the Court.

Thereupon the case was submitted to the Court upon an agreed statement of facts, and

Thereupon counsel for the defendant moved the Court for a judgment of acquittal, stating the grounds upon which said motion was made, and the said motion was argued to the Court, and was by the Court taken under advisement;

Thereupon, after due consideration, the Court finds that the evidence is insufficient to sustain a conviction for the reason that there is no basis in fact disclosed by the Selective Service file of defendant upon which Local Board No. 1 of Ravalli County, Montana, could have classified said defendant in Class 1-A-O, and therefore the said Board was without jurisdiction to make such classification of defendant and to order defendant to report for induction under such classification.

Wherefore, by reason of the premises, the law and the evidence,

IT IS ORDERED AND ADJUDGED that the defendant's motion for judgment of acquittal be and the same hereby is granted; that the defendant be and he is acquitted of the offense charged in the indictment herein and that his bond be and hereby is exonerated.

Dated this 26th day of June, 1952.

W. D. MURRAY
United States District Judge.